



Decision Notice and Finding of No Significant Impact

Bear Canyon/Trail Creek Land Exchange

Between

DePuy Enterprises, Inc.

And the

**USDA Forest Service
Northern Region**

**Gallatin National Forest
Yellowstone and Bozeman Ranger Districts**

Park County and Gallatin County, Montana

Date: July 11, 2011

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USDA Forest Service

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Decision Notice and FONSI

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I. Introduction

This Decision Notice documents my decision and “finding of no significant impact” for the **Bear Canyon/Trail Creek Land Exchange** on the Gallatin National Forest.

The Forest Service prepared an **Environmental Assessment** (“EA”) for the proposed Bear Canyon/Trail Creek Land Exchange, and requested public comment on the EA. A legal notice was published in the Bozeman Daily Chronicle (newspaper of record) on May 4, 2011. A legal notice was also published in the Livingston Enterprise. The Forest Service issued a news release regarding the EA and sent letters with copies of the EA to interested and affected parties.

After consideration of the impacts of the alternatives disclosed in the EA, and consideration of the public comments, I have selected **Alternative 2 – the Proposed Action** for implementation. The decision includes all elements of the Proposed Action:

- The exchange of Federal and Non-federal lands;
- The granting, reservation and assignment of Road and Trail easements;
- The exchange of mineral rights and the reservation of certain oil/gas mineral rights;
- The patent restriction for Federal land in Lot 1 of Section 22;
- The withdrawal revocation for Federal land in Lot 1 of Section 22.

II. Background

The lands in the Bear Canyon watershed, southeast of Bozeman and in the Trail Creek area southwest of Livingston, provide important wildlife habitat, watershed, recreation, scenic, timber, livestock grazing and other resource values. Land ownership consists of intermingled NFS lands and private lands, with a block of State of Montana (DNRC) lands in lower Bear Canyon. The private “inholdings” were established as railroad grants and homesteads.

In the early to mid-1900’s, Warren and Eva DePuy, a pioneer ranching family headquartered south of Livingston, acquired most of the private lands in the Bear Canyon - Trail Creek area. The DePuy family managed these lands primarily for cattle ranching and timber. The DePuy family has tolerated public recreational use on most their lands inside the Forest boundary, and the public has enjoyed use of these private lands along with the NFS and State lands.

Through the years, a system of low-standard roads and trails has been developed across the intermingled NFS, State and DePuy lands. The trail system is managed and maintained primarily by the Forest Service. But until recently, the Forest Service had not perfected access rights for trail segments across the DePuy and State lands. Most of the road system was developed by the DePuy family in conjunction with management of their private lands. Until recently, DePuy had not acquired road access rights across intermingled NFS lands. Key

objectives of the land exchange are to consolidate the NFS lands and DePuy lands in Bear Canyon and Trail Creek, and to provide legal road and trail access to the consolidated lands.

In the 1980's, the Forest Service and the DePuy family completed a land exchange in the Trail Creek area, consolidating only some of the intermingled lands. At that time, the Forest Service acquired an easement from DePuy for a segment of Goose Creek Road No. 1005.

In 1999, as part of a legislated land exchange (P.L.105-267 - Gallatin Land Consolidation Act of 1998) between the U.S. and Big Sky Lumber Co. (BSL), the U.S. acquired a 438-acre parcel of BSL land in Trail Creek in Section 27, T3S, R7E. The NFS land in Section 27 adjoins DePuy and other private lands on three sides. The Forest Service has no legal road access to it. The Federal land in Section 27 is included in the land exchange.

In the past decade, Warren and Eva DePuy both passed, leaving the DePuy family estate to three children. Settling the estate took several years. To pay estate taxes, the three heirs decided to sell some of their lands outside the Forest boundary, including a block of lands in Trail Creek, which was sold to Trail Creek Ranch ("TCR") as a recreational retreat and real estate investment.

The DePuy lands located inside the Forest boundary were in a corporation, DePuy Enterprises, Inc. ("DePuy"). All stock in the corporation is held by a daughter, Betty Jo Smith. Daryl Smith, Betty's son, is the President of the corporation and manager of the DePuy lands.

In 2005-2009, the Forest Service, working with the Trust for Public Land (TPL) and other conservation partners and agencies, made a concerted effort to acquire and conserve private lands in the Bozeman Pass area and in the Bear Canyon watershed. The goal was to protect the recreation, wildlife and watershed values, and to reduce the risk of re-sale and development.

In 2008, the Forest Service, working with the MSU Foundation, TPL, and heirs to the Trent family in Washington, acquired the 80-acre "Trent-Osborne" inholding in upper Bear Canyon.

In 2007-2009, the Forest Service, TPL, Gallatin Valley Land Trust (GVLT), Gallatin County and other partners completed the Bozeman Pass Land Conservation Project. The Bozeman Pass Project conserved 2,055 acres of land in a combination of land purchases, land donation and a conservation easement. The Forest Service purchased 640 acres (Section 29, T2S, R7E), and acquired 147 acres of land along I-90 by donation (in Sections 19 and 20, T2S, R7E). Also, two new public access trail easements and one road easement were acquired by the U.S.

With completion of these projects, the DePuy lands are now the only remaining private lands in the upper Bear Canyon watershed. The attached **Map A** shows current land ownership in the Bear Canyon and Trail Creek areas of the Forest.

During this same timeframe, the Forest Service initiated discussions with DePuy Enterprises. At first, those discussions focused on potential purchase of certain DePuy lands in Bear Canyon.

However, DePuy representatives expressed strong concerns about avoiding more capital gains taxes, and indicated a strong preference for a land-for-land exchange with the Forest Service.

In 2007-2009, numerous discussions took place between the Forest Service, Bill Madden and Daryl Smith aimed at developing an exchange proposal that both parties could support. The Forest Service had two objectives: (1) acquire and consolidate lands in the Bear Canyon watershed, and (2) secure trail and road easements across DePuy lands to the consolidated NFS lands. The objectives for DePuy were: (1) acquire a more manageable block of private lands in the Trail Creek area, and (2) secure legal road access rights to its lands. In addition, DePuy expressed a strong desire to secure road access rights to its lands, with or without an exchange. The Forest Service and DePuy reached agreement on the current land exchange in 2009.

Bear Canyon contains extremely erosive soils and serious water quality issues. The Forest Service is continuing to work cooperatively with Gallatin County and the State of Montana (DNRC and Department of Environmental Quality) to address these issues through a watershed restoration strategy. If the DePuy lands in the upper Bear Canyon watershed were to be sold, the new owner(s) would likely want to develop a new road system into upper Bear Canyon, threatening the watershed restoration work done to date and potentially re-establishing the water quality complaints that were resolved through restoration. In the EA, the Forest Service documented the anticipated effects of the “No Action” alternative (Alternative 1.)

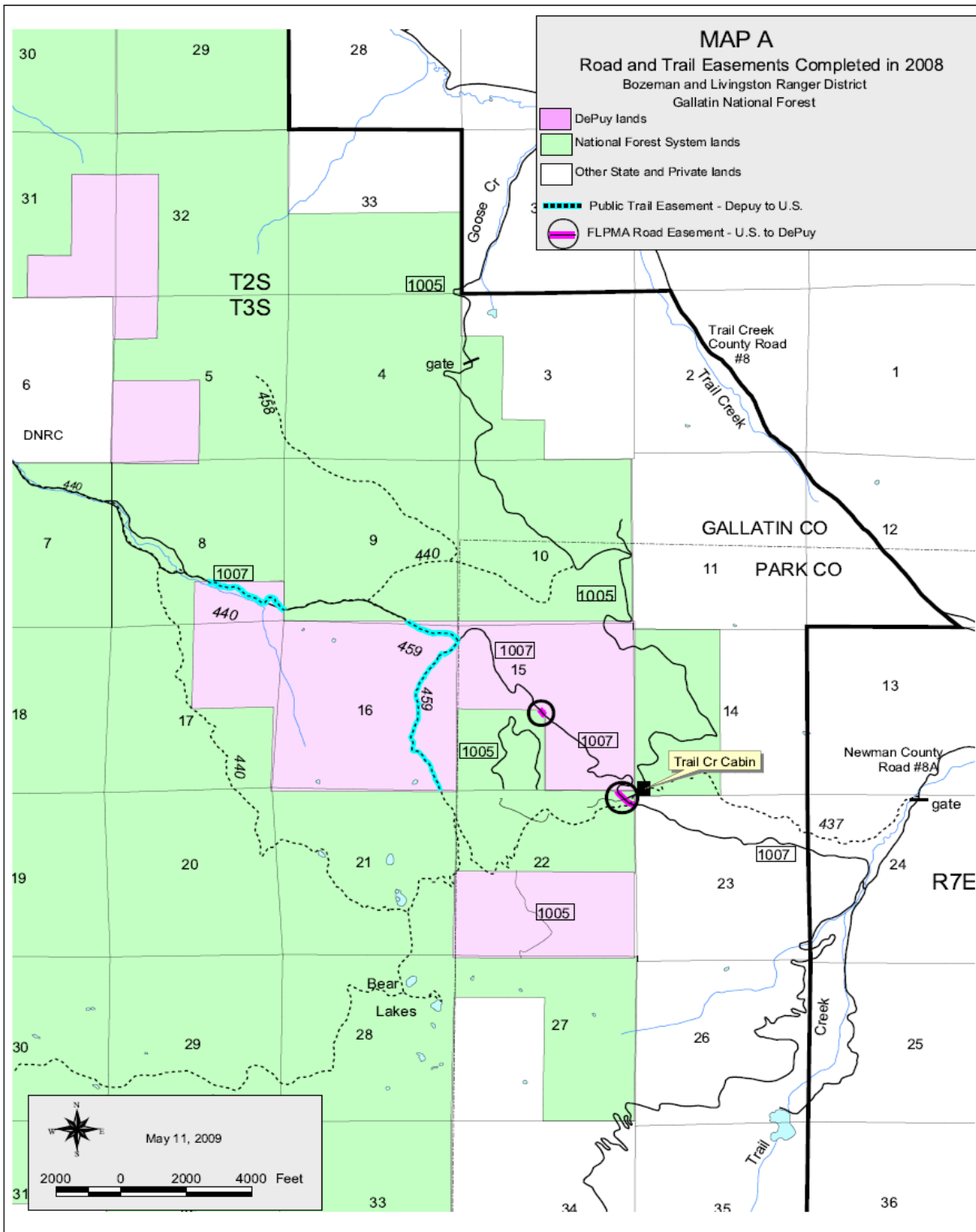
To protect the Bear Canyon watershed, to conserve important wildlife habitat, to ensure future recreational access, and to protect scenic values from the Gallatin Valley, public acquisition of the DePuy lands in Bear Canyon has become very high priority for the Forest Service, and is supported by the State of Montana, Gallatin County and local residents.

III. Purpose and Need for Action

The overall purpose and need for the Bear Canyon – Trail Creek Land Exchange is to consolidate public and private land ownership in order to:

- Improve long-term land management effectiveness;
- Eliminate the potential for new roads and development in the Bear Canyon watershed;
- Enable public acquisition of private in-holdings with high wildlife and recreation values;
- Avoid future development of private lands that are highly visible from Bozeman and Interstate 90 in the Bear Canyon watershed and Chestnut Mountain area.

Map A: Current land ownership and access patterns, Bear Canyon and Trail Creek areas.



IV. Proposed Action

The Bear Canyon-Trail Creek (aka “DePuy”) Land Exchange involves several small parcels of Federal and Non-federal lands located southwest of Livingston in the Trail Creek area on the Yellowstone Ranger District, and several small parcels of Non-federal land located southeast of Bozeman in the Bear Canyon – Chestnut Mountain area on the Bozeman Ranger District. All lands identified for exchange are within the Gallatin National Forest.

Non-federal lands:

DePuy will convey, dependent on appraised land values, up to approximately 766 total acres of Non-federal lands to the “U.S.” for inclusion in the Gallatin National Forest. These lands are located south of Interstate 90 and east of Bear Canyon Creek, as shown in red on attached **Map B**. The Non-federal lands consist of several small separate parcels. Approximately 721.3 acres of the Non-federal lands are located in the Bear Canyon watershed in Gallatin County, within Sections 31 and 32, T2S, R7E, and Sections 5, 8, and 17, T3S, R7E. These lands are surrounded by NFS lands and State DNRC lands. If needed to balance appraised values, an additional 44.24-acre parcel of Non-federal land located in the Trail Creek drainage in Park County, within Section 15, T3S, R7E, would be included in the exchange. Chapter 1 of the EA contains detailed legal descriptions for the Non-federal lands.

Federal Lands:

The U.S. will convey approximately 645 total acres of Federal lands to DePuy. The Federal lands consist of three parcels, shown in dark green on attached **Map B**. The Federal lands are located south of I-90, in the Trail Creek drainage in Park County. The lands are within Sections 15, 22 and 27, T3S, R7E, adjacent to other private lands owned by DePuy and Trail Creek Ranch. Chapter 1 of the EA contains detailed legal descriptions for the Federal lands.

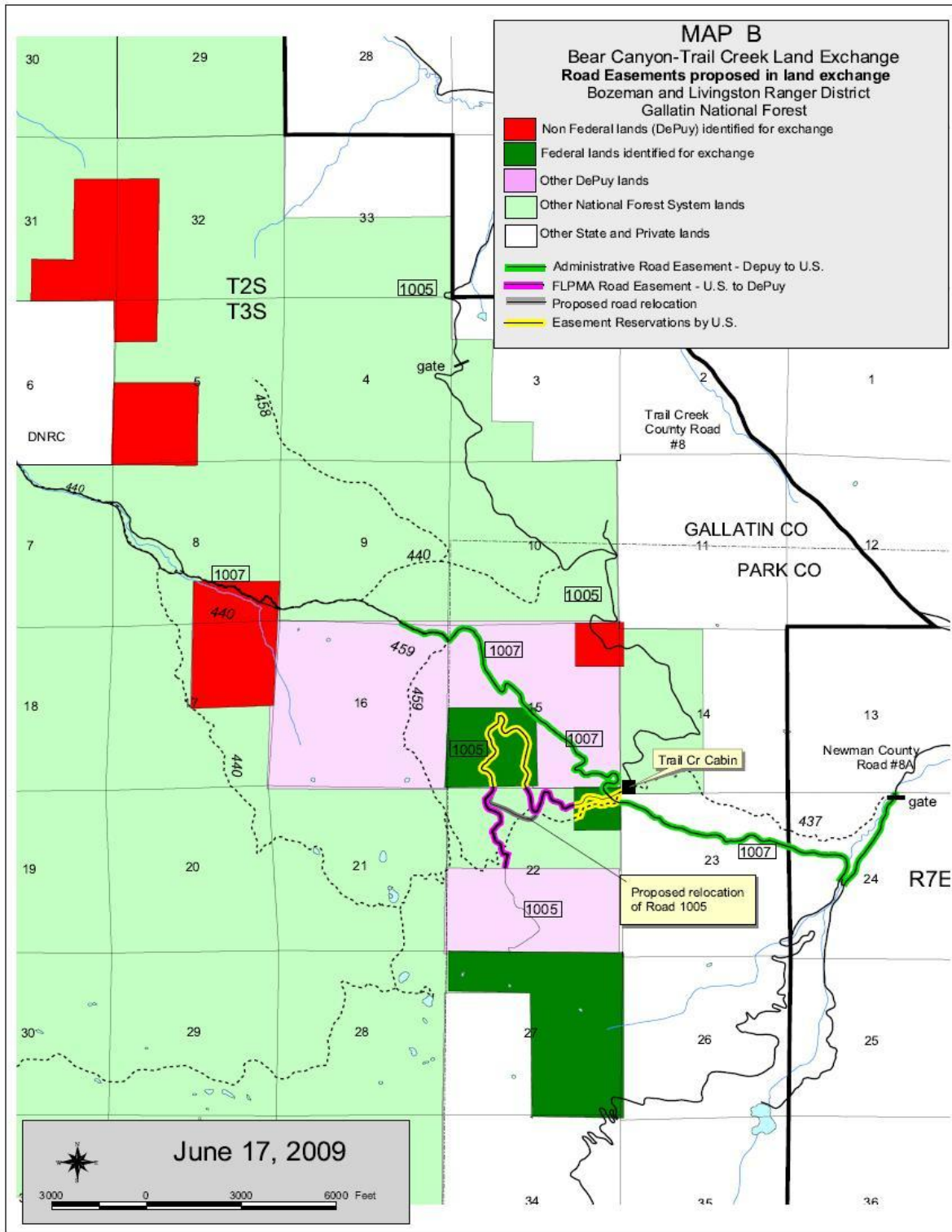
Deed Restriction:

The patent (deed) issued by the U.S. to DePuy for the parcel of Federal land in Lot 1 of Section 22 will contain a permanent deed restriction. The purpose for the deed restriction is to protect scenic and other natural resource values, particularly because Lot 1 of Section 22 is visible from the Trail Creek cabin and from Bear Canyon Loop Trail No. 440 as that trail crosses Lot 1. No buildings can be constructed or placed within this restricted area. The Forest Service will reserve the right to inspect for violations of the deed restriction.

Administrative Site Withdrawal:

Lot 1 of Section 22 was “withdrawn” by Secretary’s Order for use as an Administrative Site (Trail Creek Ranger Station). There are no structures related to the Ranger Station in Lot 1. The Trail Creek cabin is located in the adjoining Section 14 on NFS land. The Forest Service uses

Map B: Proposed Bear Canyon – Trail Creek Land Exchange



that cabin as a recreation rental cabin. The land exchange will not affect the cabin. The Withdrawal must be revoked by the BLM prior to the exchange of Lot 1 of Section 22.

Water Rights:

Water rights held by DePuy appurtenant to the Non-federal lands will transfer to the U.S. in the exchange. Water Right No. 41H 138997-00 is co-owned by DePuy. The U.S. received a portion of this water right in 1987, through a prior exchange with DePuy. The U.S. will receive a split water right for stock water with a 1945 priority date. The remainder of this right, with the exception of stock use in Section 16, T3S, R7E, will transfer to the U.S. The U.S. holds no water rights or claims on the Federal lands identified for exchange.

Mineral Rights:

Federal Lands:

All mineral rights associated with the Federal lands are owned by the U.S. and will be conveyed to DePuy in the land exchange, with the following two exceptions:

- In Section 27, T3S, R7E, the oil, gas and other hydrocarbons are severed and held by Conoco-Phillips, Inc. Efforts by the Forest Service to acquire these outstanding rights were not successful. The U.S. holds partial surface occupancy rights associated with these severed interests, and will convey those rights to DePuy in this exchange.
- Federal oil and gas leases currently exist on the Federal lands in SW ¼ of Section 15, T3S, R7E and Lot 1 of Section 22, T3S, R7E. All oil and gas leases on the Gallatin National Forest were suspended by the BLM following a Ninth Circuit Court (“Conner v. Burford”) ruling in 1985. The Federal oil and gas leases are held by Chevron USA Holdings, Inc. (32.20% interest) and Unit Petro Co. (67.80% interest). The U.S. will reserve these Federal oil and gas rights until these leases terminate or are relinquished. Upon termination or relinquishment, all oil and gas rights in the involved lands would automatically vest in DePuy, its successors and assigns.

Non-federal lands:

DePuy owns all mineral rights associated with the Non-federal lands, and will convey those rights to the U.S. in the exchange, with two exceptions:

- The mineral estate affecting the Non-federal land in Lot 1 of Section 15, T3S, R7E is severed from the surface estate, and evidently held by Conoco-Phillips. Efforts by the Forest Service and DePuy to acquire these outstanding rights were not successful.

DePuy will reserve oil and gas rights affecting the Non-federal lands in NE $\frac{1}{4}$ of Section 17, T3S, R7E, and in S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 8, T3S, R7E. This reservation will remain in effect until the two oil and gas leases affecting the Federal lands (described above) terminate or are relinquished. Upon termination or relinquishment of the Federal oil and gas leases, all reserved oil and gas rights in the Non-federal lands would automatically terminate and vest in the U.S., and its assigns.

Road and Trail Access:

The Forest Service and DePuy will grant, assign and reserve the following road and trail easements to ensure that legal access exists to the consolidated NFS lands and the consolidated DePuy lands after the land exchange.

Forest Service Easement Reservations: (Refer to Map B, roads and trail shown in yellow):

The Forest Service will reserve permanent road easements for future access as follows:

1. Road easement for Goose Creek Road No. 1005 across Lot1 of Section 22 and across the SW $\frac{1}{4}$ of Section 15. This reservation is subject to the right of DePuy in the future to relocate the existing road and easement to the mutual satisfaction of DePuy and the Forest Service, so that it lies solely within Section 22, T3S, R7E, in which case the Forest Service would terminate the easement reserved across Section 15.
2. Road easement for West Fork Trail Creek Road No. 1007 across Section 15 and Section 22, for Forest Service administrative purposes.
3. Trail easement for Bear Canyon Loop Trail No. 440 across Section 22.

Forest Service Road Easement Grant to DePuy: (Refer to Map B, road shown in purple)

The Forest Service will grant an easement to DePuy for portions of Goose Creek Road No. 1005 across the north half of Section 22, T3S, R7E. The easement will authorize DePuy's continued non-exclusive use of Road No. 1005, an existing National Forest System road. In addition, DePuy would have the right, in the future, to relocate the existing road and easement to the mutual satisfaction of DePuy and the Forest Service, so that it would lie solely within Section 22, T3S, R7E, and not cross the Southwestern quarter of Section 15, T3S, R7E.

DePuy Road Easement Grant and Assignment to U.S.: (Refer to Map B, road shown in green)

DePuy will grant an easement to the U.S. for portions of West Fork Trail Creek Road No. 1007 across Section 15 and Section 16, T3S, R7E. This easement will authorize the Forest Service to use and maintain Road No. 1007 for administrative purposes.

DePuy will also assign an easement to the U.S. for portions of West Fork Trail Creek Road No. 1007 across Sections 23 and 24, T3S, R7E. This assignment of easement will authorize the Forest Service to use and maintain Road No. 1007 for administrative purposes.

Options to Balance Appraised Values

Based on the approved appraisal reports, the estimated total market value of the Federal lands is **\$1,437,000**, and the estimated total market value of the Non-federal lands is **\$1,721,000**. Therefore, based on the approved appraisals, the overall value of the Non-federal lands exceeds the value of the Federal lands by approximately **\$284,000**. Chapter 3 of the EA provides details.

Consistent with federal law and regulations, agency policy for land exchanges and the agreement reached between the parties (“*Agreement to Initiate*”), the Bear Canyon-Trail Creek Land Exchange will be completed on the basis of equal market values.

The parties will consider the following options to equalize the overall exchange values:

Option 1: The Forest Service may make a cash equalization payment to DePuy to help equalize exchange values, contingent on the availability of federal funding.

Option 2: DePuy may drop one or more parcels of Non-federal land from the exchange to help equalize values. In this option, by agreement between the parties, the first choice of parcels to consider deleting from the land exchange would be Lot 1 of Section 15, T3S, R7E.

Option 3: DePuy may reserve timber harvest rights. This option is not favored by either party, and would only be considered if options 1 and 2 are determined not feasible.

Option 4: DePuy may donate a portion of Non-federal land value, in lieu of or in addition to Option 1, Option 2 and/or Option 3. DePuy does not favor this option.

V. Decision and Reasons for the Decision

A. Decision Criteria

In making my decision regarding the proposed Bear Canyon/Trail Creek Land Exchange on the Gallatin National Forest, I focused on the following five criteria:

1. The effectiveness of the alternative in improving long-term land management effectiveness in the Bear Canyon and Trail Creek areas of the Gallatin National Forest.
2. The effectiveness of the alternative in reducing potential for new roads and development in the Bear Canyon watershed, an area containing erosive soils and landside hazards.

3. Whether the alternative will compliment the pending Bear Canyon Settlement Agreement between the Forest Service, State of Montana DNRC and Gallatin County.
4. The effectiveness of the alternative in providing for public acquisition and conservation of private in-holdings with high wildlife and recreation values.
5. The effectiveness of the alternative in avoiding future development of private lands that are viewed from Bozeman and I- 90 in the Bear Canyon/Chestnut Mountain area.

B. Decision

Based on a comparison of alternatives with the criteria described above I have decided to implement **Alternative 2 – the Proposed Action** for implementation.

The decision includes all elements of the Proposed Action:

- The exchange of Federal and Non-federal lands;
- The granting, reservation and assignment of Road and Trail easements;
- The exchange of mineral rights and the reservation of certain oil/gas mineral rights;
- The patent restriction for Federal land in Lot1 of Section 22;
- The revocation of the withdrawal affecting the Federal land in Lot 1 of Section 22.

The selected alternative is described in considerable detail in **Section IV – Proposed Action**.

In the selected alternative, DePuy Enterprises Inc. (“DePuy”) will convey, dependent on appraised land values, up to approximately 766 total acres of Non-federal lands to the United States (“U.S.”) for inclusion in the Gallatin National Forest. The Non-federal (DePuy) lands consist of several separate parcels. Approximately 721 acres of Non-federal lands are located southeast of Bozeman in the Bear Canyon area in Gallatin County. The private lands in Bear Canyon are surrounded by NFS lands and State DNRC lands. If needed to balance the appraised values, an additional 44.24-acre parcel of Non-federal land, located in the Trail Creek drainage in Park County, would also be exchanged to the U.S.

In the selected alternative, the U.S. will convey approximately 645 total acres of Federal (National Forest System) lands to DePuy. The Federal lands consist of three parcels located southwest of Livingston in the Trail Creek drainage in Park County. The Federal lands are adjacent to other private lands owned by DePuy and by Trail Creek Ranch.

In this selected alternative, the Forest Service and DePuy will grant, assign and reserve road and trail easements to ensure that legal access exists to the consolidated NFS lands and the consolidated DePuy lands after the land exchange.

Also in the selected alternative, the U.S. will place a permanent deed restriction on the Federal land parcel in Lot 1, Section 22, T3S, R7E. The deed restriction will restrict future development. Also, in the selected alternative, all mineral rights associated with the Federal lands are owned by the U.S. and will be conveyed to DePuy in the land exchange, with two exceptions:

- In Section 27, T3S, R7E, the oil, gas and other hydrocarbons are severed. Efforts to acquire these outstanding rights were not successful. The U.S. holds surface occupancy rights associated with these severed interests, and will convey those rights to DePuy.
- On the Federal lands in SW ¼ of Section 15, T3S, R7E and Lot 1 of Section 22, T3S, R7E, the U.S. will reserve the Federal oil and gas rights until two existing third party leases terminate or are relinquished. Upon termination or relinquishment, all oil and gas rights in the involved lands will automatically vest in DePuy, its successors and assigns.

In the selected alternative, DePuy owns all mineral rights associated with the Non-federal lands and will convey those rights to the U.S., with two exceptions:

- The mineral estate affecting Lot 1 of Section 15, T3S, R7E is severed from the surface estate. Efforts to acquire these outstanding rights were not successful.
- DePuy will reserve oil and gas rights affecting the Non-federal lands in NE¼ of Section 17, T3S, R7E, and in S½ SE¼ of Section 8, T3S, R7E. This reservation will remain in effect until the two oil and gas leases affecting the Federal lands (described above) terminate or are relinquished. Upon termination or relinquishment of the Federal oil and gas leases, all reserved oil and gas rights in the Non-federal lands will automatically terminate and vest in the U.S., and its assigns.

C. Consideration of the Issues

Based on comments received during scoping for this proposal and the environmental analysis disclosed in the EA, I found four issues to be significant to my decision.

1. **Water Quality.** Concern was raised that a proposed land exchange, or the absence of a potential exchange, could affect water quality, particularly in Bear Canyon.
2. **Wildlife Habitat.** Concern was raised that a proposed land exchange, or the absence of a potential exchange, could affect wildlife habitat.
3. **Visual Quality.** Concern was raised that a proposed land exchange, or the absence of a potential exchange, could affect visual quality, particularly from Bozeman and travel corridors.
3. **Access.** Concern was raised during scoping that a proposed land exchange, or the absence of a potential land exchange, could affect public, private, and administrative access.

My conclusions about each of these issues are discussed in Section D. which follows.

D. Reasons for the Decision

I made my decision to select Alternative 2 because it best meets the overall purpose and need for the project, best responds to the public issues, and sets the stage for more effective and efficient management of NFS lands in the project area. Forest Service specialists considered public comments and used those comments to strengthen the environmental analysis. The issues and concerns have been thoroughly analyzed and discussed in the EA. All comments and analysis are filed in the project record.

Considering all alternatives, including those considered but eliminated from detailed study, a range of reasonable alternatives was considered. I have also reviewed the alternatives considered in detail and find they were responsive to key issues and the purpose and need for the analysis.

In accordance with 36 CFR 254.3 (b)(2)(i) and (ii), I determined that this land exchange, including the granting, assignment and reservation of road and trail easements, will serve the public interest; that the resource values and public objectives served by the Non-federal lands to be acquired exceed the resource objectives and served by the Federal lands to be conveyed, and that the intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands. The EA demonstrates that National Forest management will not be adversely affected by this exchange. The EA also demonstrates that there will be no significant adverse impacts to the quality of the human environment as a result of this exchange. (*EA, Chapter 4*).

1. Land Consolidation:

As described in the EA, the Bear Canyon area of the Forest consists of intermingled parcels of NFS and private lands. Intermingled public and private lands are difficult to manage effectively. Forest Service goals, which involve managing NFS lands for watershed protection, healthy forests, wildlife habitat and recreation, are difficult to achieve in a patch-work ownership pattern.

This land exchange, coupled with the recent public acquisitions of private lands in the Bear Canyon watershed (Trent-Osborne) and in the Bozeman Pass –Chestnut Mountain area, will complete the consolidation of NFS lands in this important and popular area of the Forest.

By consolidating public lands in Bear Canyon and consolidating private lands in a portion of Trail Creek, this exchange will improve long-term management effectiveness. The selected alternative will allow more consistent application of Forest Plan management direction and Travel Plan prescriptions to the consolidated Forest land base. (*EA: Chapter 4, 36 CFR 254.3(f)*)

This exchange will result in a net increase in public lands within the Gallatin National Forest. Gallatin County will see a net increase of 722 acres of Federal lands, and Park County will see a

net decrease of approximately 645 acres of Federal lands. This exchange will also result in a net increase of approximately 1.5 acres of wetlands and floodplain under Federal jurisdiction.

2. Potential for new roads and development in Bear Canyon watershed:

As described in the EA, the Bear Canyon watershed contains erosive soils and landslides. This exchange will consolidate NFS lands in the Bear Canyon watershed and consolidate DePuy lands in the Trail Creek area. I chose the land exchange alternative, in part, because it will greatly reduce the risk of development of the DePuy lands in Bear Canyon, and reduce the costs and environmental impacts of developing new roads to private lands within the Forest. (EA, pages 54-56)

3. Water Quality and Bear Canyon Settlement Agreement:

In response to serious water quality issues and a complaint from by the Montana DEQ in 2002, the Forest Service, Montana DNRC and Gallatin County have been working together to address the water quality issues in Bear Canyon while also providing for permanent trail access into the upper Bear Canyon area, from the ski area to the Park County line. The three agencies recently entered into an Interim Settlement Agreement and are now working to finalize that agreement. In part, I decided to proceed with the land exchange because it will further the goals of this Settlement Agreement and help the agencies implement it.

Without the land exchange, private lands with no existing practical road access would remain in the Bear Canyon area. If DePuy or subsequent owners sought to develop new road access to its lands, the reopening of Bear Canyon Road to motorized vehicles could result. New access roads to the DePuy lands might also be built (EA, Map C and pages 54-56). Reopening Bear Canyon Road, and/or building new roads to the DePuy lands, could reverse the watershed work done in Bear Canyon, and could lead to a new DEQ complaint. I believe that scenario would adversely affect the ongoing efforts of the cooperating agencies to implement a Settlement Agreement.

4. Wildlife values:

I conclude this exchange will reduce the potential for new roads and private development near an important wildlife travel linkage between the Gallatin Mountains and the Bridger Mountains to the north. This linkage facilitates movement of the threatened grizzly bear, Canada lynx, elk and other mammals between the Bridger Mountains, the Gallatin Range and Yellowstone Park.

This current consolidation of NFS lands near the linkage area compliments the past efforts by the Forest Service in partnership with TPL, GVL and other cooperators, to acquire private lands and conservation easements in the Bozeman Pass and Bear Canyon/Chestnut Mountain areas.

The Forest Service Wildlife Biologist determined that this exchange will be no negative effect or loss of viability across the Forest for any endangered, threatened, or sensitive species or their habitat (*EA: pages 56-58*).

The Forest Service fisheries biologist determined that this exchange will have no effect on Yellowstone cutthroat trout, a sensitive species. This exchange will benefit recreational fishing in proximity to Bozeman, by increasing access to approximately 3,873 feet of Bear Creek, a perennial, fish-bearing stream. All streams on the Federal lands to be exchanged are either perennial non-fish bearing or intermittent. The exchange of these lands will not result in the loss of trout habitat or result in loss of future conservation management options. (*EA: page 63*).

5. Recreation and Access:

For several years, the Forest Service and conservation partners have worked to consolidate public ownership of lands in the vicinity of Chestnut Mountain and Frog Rock. This has provided greater trail linkages and public access to this part of the Forest.

Public acquisition of the DePuy lands will further consolidate NFS lands in the Bear Canyon/Chestnut Mountain area, complementing prior consolidation efforts and providing additional contiguous public lands open for recreational access and use. Users will no longer need to be concerned about trespassing onto these intermingled private lands.

The lands in this exchange contain several existing trails and roads. In some cases, legal public access rights currently exist, but in other cases, legal access rights do not exist. In scoping, people expressed concern that public access rights not be diminished as a result of this exchange. In my chosen alternative, the Forest Service and DePuy will grant, assign and reserve permanent road and trail easements to ensure that reasonable legal access rights are available to the consolidated NFS lands and consolidated DePuy lands after the exchange. (*EA, pages 64-65*)

Two existing National Forest access facilities will be affected by this land exchange. By reserving permanent easements, Goose Creek Road No. 1005 will remain available for public access through Lot 1 of Section 22 and the SW ¼ of Section 15, T3S, R7E. Bear Loop Trail No. 440 through Lot 1 of Section 22 will also be available for continued public use.

The exchange of Federal land in Section 27, T3S, R7E will not significantly affect recreation resources or activities, because there currently is no reasonable or legal access to this land.

6. Scenic values:

Based on analysis (*EA pages 58-59*), I conclude that, overall, this exchange will provide additional long-term protection of visual resources from Bozeman and popular roads and trails.

Lot 1 of Section 22, T3S, R7E is visible from the Trail Creek cabin and from Bear Canyon Loop Trail No. 440 as that trail crosses Lot 1. The other Federal lands in this exchange are not visually prominent. The patent (deed) restriction for Lot 1 of Section 22 will help to permanently protect scenic and other resource values. (*EA pages 58-59*)

Chestnut Mountain is an important landmark. The past efforts by the Forest Service, TPL, GVL and other conservation partners in the Bozeman Pass project led to the public acquisition of lands in the northern portion of Chestnut Mountain. This land exchange will complement these prior efforts and further protect the valuable scenic resources of this area.

The Non-federal (DePuy) lands in the Chestnut Mountain area are prominently visible from Bozeman and Interstate 90. Given DePuy's stated intention to request road access to these parcels if the exchange is not completed, and DePuy's right to obtain reasonable access under federal law, some future development of the DePuy parcels is likely if this exchange is not completed. Any such development would impact a prominent scenic resource.

Non-significant Issues

Agency and public scoping helped to identify other issues and concerns related to this project. The interdisciplinary team did not analyze these other issues in detail in the environmental analysis, since implementing either alternative would have no effect, or only minor effects, related to these other issues. A brief description of these other issues follows.

Fire Management

There would be no substantial change in fire management and fire suppression efforts with either action. Whether in public or private ownership, the lands proposed for exchange would still be accessible for responding to wildfires and other emergency and health and safety purposes.

Noxious Weeds

The NFS and DePuy lands in the Bear Canyon -Trail Creek area have historically been used for a variety of purposes including timber, livestock grazing and recreation. All of these uses have the potential to introduce noxious weeds. The land exchange would not change this risk.

Sensitive Plants

Forest Service staff identified potential habitat of four plant species considered sensitive but did not find any occurrences of such species on the lands considered for exchange.

Wetlands and Floodplains

The amount of wetlands and floodplains potentially affected by this proposed exchange is small. The exchange would result in a net increase in amount of wetland and floodplain on NFS lands. The exchange would comply with the two Executive Orders for wetlands and floodplains.

Livestock Grazing

Federal Lands: The Bear Canyon-Trail Creek areas contain four livestock grazing allotments: Bear Canyon, Goose Creek, Trail Creek and Bald Knob. Currently, four permit holders (DePuy, Trail Creek Ranch LLC, Roy Metcalf and Darrell Kurk) hold six different grazing permits. In this land exchange, three of the six grazing permits will be affected, as follows:

- Within the Bear Canyon Allotment, the grazing permits held by DePuy will be modified to reflect the change in ownership. The total permitted numbers will not change.
- Within the Trail Creek Allotment, the term grazing permit held by DePuy will change to a Term On/Off Grazing Permit, since NFS acreage will be less than 1/3 of the allotment.
- The Bald Knob Allotment will be located entirely on private land and will no longer be suitable as a National Forest allotment. The Forest Service will take steps to close it in the future. The permit for this allotment is currently held by Trail Creek Ranch.

Non-Federal Lands: DePuy currently allows O'Hair Ranch to graze cattle on the Non-federal lands under a year-to-year lease. After the exchange, the Forest Service will determine whether or not to continue livestock grazing on the acquired lands.

Timber Resources

In 2007, timber consultant Craig Kamps conducted an analysis of merchantable timber volumes for the Federal and Non-federal lands. Forest Service timber specialists reviewed the timber report and determined the timber volume estimates were reasonably accurate. The acreage of timber on the Federal lands (461 acres) is similar to the acreage of timber on the Non-federal lands (494 acres). The volume of timber on the Non-federal lands (4,334 thousand board feet ("MBF")) exceeds the volume on the Federal lands (2,654 MBF) by approximately 1, 680 MBF.

Cultural Resources

The Forest Service conducted an archeological survey of the Federal lands considered for exchange. Three historic or archeological sites were located in the general vicinity, but none were located on the lands proposed for exchange and none would be affected by the exchange.

Mineral Potential and Risk of Development

The Forest Service found low mineral potential and low risk for development for lands in the proposed exchange. This finding is based on a lack of evidence, both physical and documented, of past mineral development in the area and unfavorable site geology (Werner 2009).

Hazardous Materials

Forest Service staff completed hazardous materials screening and inspections for all lands proposed for exchange. No evidence of hazardous materials or petroleum products was identified, and no further investigations were recommended (White 2009 and 2010).

E. Alternatives Studied In Detail

The Forest Service (Interdisciplinary Team) determined that two alternatives, No Action and the Proposed Action, would adequately identify the effects associated with significant issues:

Alternative 1 – No Action

Do Not Implement Proposed Land Exchange

This alternative represents reasonably foreseeable conditions that would be expected to occur in the absence of the proposed land exchange. Alternative 1 would not change the existing land ownership in the Bear Canyon and Trail Creek areas, or alter access routes in those areas.

Alternative 2 – Proposed Action

Implement Proposed Land Exchange and Reserve/exchange Easements

This alternative implements an exchange of lands to consolidate NFS lands in Bear Canyon and DePuy lands in Trail Creek. This alternative includes the grant, assignment and reservation of road and trail easements as described in Chapter 1 of the EA. These two alternatives were determined adequate because: (a) the importance of environmental issues can be minimized through application of mitigation and design features to the Proposed Action; and (b) the effects can be understood through comparison of the Proposed Action and No Action Alternatives.

F. Alternatives Not Given Detailed Study

A direct purchase alternative was considered, but not evaluated in detail for the Bear Canyon – Trail Creek Land Exchange. Except for cash equalization funds that may be needed to balance the appraised values, DePuy is not interested in selling its lands to the U.S., only exchanging those lands for NFS lands of equal value. No other alternatives were considered, since the Proposed Action fully addresses the purpose and need for action, and no other action is available.

VI. Public Involvement

A. Overview of the Public Involvement Process

As described in the Background section, the need for this action arose when the Forest Service was collaborating with conservation partners to acquire and conserve private lands in the Bear Canyon/Bozeman Pass area. During this timeframe (2007-2009), the Forest Service, State of Montana and Gallatin County were also working to address the water quality issues in the Bear Canyon watershed. The land exchange proposal evolved in part from these prior efforts to acquire the private lands and to address the water quality issues in upper Bear Canyon.

The proposed Bear Canyon/Trail Creek Land Exchange was listed in the Schedule of Proposed Actions starting in 2009 and continuing through early 2011.

On June 16, 2009, the Forest Service mailed a letter to 52 interested and/or affected individuals and organizations, to provide information about the proposed exchange, and to solicit comments. This outreach generated four substantive public or agency comments. The Forest Service also consulted with numerous organizations, individuals and other agencies in conducting the environmental analysis process. See Chapter 2 and Chapter 5 of the EA for more information.

The comments received from the public and from other agencies assisted the Forest Service (interdisciplinary team) in identifying the issues regarding the effects of the proposed action. The significant issues were used to develop the alternatives. Refer to Section V. above and Chapter 2 of the EA for more information.

The Forest Service requested public comment on the EA in May/June 2011. A legal notice was published in the Bozeman Daily Chronicle (newspaper of record) on May 4, 2011. A legal notice was also published in the Livingston Enterprise. The Forest Service issued a news release regarding the EA and sent letters with copies of the EA to interested and affected parties.

B. Consideration of Public and Other Agency Comments

I want to take this opportunity to acknowledge and briefly respond to public and agency comments received during scoping for this land exchange in 2009, and the public comments received on the EA in May/June 2011.

During scoping, Julie Cunningham and Tom Lemke, local wildlife biologists for **Montana Fish, Wildlife and Parks**, wrote this comment: “...*this land exchange includes many benefits, and we support the project. Inclusion of the demarcated lands into Gallatin National Forest holdings will benefit wildlife management for elk, deer and black bear in particular. Subdivision in the*

Bear Canyon area is reaching a density challenging the management and control of resident elk and deer herds, and preventing further division or development of these parcels is important. Furthermore, this land exchange will benefit sportspersons and outdoor recreation enthusiasts, as it consolidates lands into public ownership facilitating hunting and other activities.”

The Forest Service concurs with FWP’s comment. One reason for my selection of Alternative 2, the Proposed Action, is this land exchange will enable public acquisition and consolidation of public lands in Bear Canyon, greatly reducing the risk of future development, and enhancing future management of wildlife species, while also ensuring public use of the acquired lands.

Two conservation organizations - the **Greater Yellowstone Coalition** (GYC, Hannah Stouts) and **The Trust for Public Land** (TPL, Alex Diekmann) - submitted comments on the EA. Both organizations strongly endorsed the proposed land exchange, citing the public benefits of consolidating lands in the Bear Canyon area, particularly for wildlife and public recreation.

The Forest Service appreciates and concurs with the comments from GYC and TPL. This land exchange will achieve the longstanding Forest Service goal of consolidation of public lands in Bear Canyon, and improving future management for wildlife, recreation and water quality.

Trail Creek Ranch, LLC, which owns private lands adjacent to the Forest boundary and adjacent to DePuy lands, also commented on the land exchange. TCR expressed its sincere support for the proposal to consolidate checkerboard lands and provide legal access. TCR is interested in continuing discussions with the Forest Service and DePuy representatives regarding the assigned easement for West Fork Trail Creek Road, which extends through TCR property.

The Forest Service appreciates the comments from TCR, especially as a neighboring landowner. We will continue to work with TCR to address any concerns that may exist regarding future use and maintenance of West Fork Trail Creek Road No. 1007.

Jerry Caler, who lives on Trail Creek Road, a county road, wrote a note strongly objecting to the land exchange. Mr. Caler stated the exchange “...*would open the area to more development. You are changing the rules after they were set. You will disturb wildlife and vegetation as a result of this plan; create more noise pollution on Trail Creek Rd; increase traffic causing safety and road maintenance issues; and cause an overall detrimental impact to the area.*”

While I certainly respect the concerns expressed by Mr. Caler, I want to make two points. First, it is beyond the scope this land exchange to address possible future changes in traffic levels on the Trail Creek county road. Second, the analysis of effects in the EA does not support a contention that this exchange would open the area to more development, increase noise pollution or traffic, or increase disturbance to wildlife or vegetation. In comparing the Proposed Action and the No Action alternatives, it is anticipated that No Action could actually lead to more new roads to access the scattered private parcels of land. Subsequent timber harvesting, and/or sale

and development of these private parcels, would increase the disturbance to wildlife and vegetation, in contrast to the land exchange, which is the Proposed Action.

VII. Finding of No Significant Impact

I have reviewed the direct, indirect and cumulative effects of the proposed activities and alternatives documented in the EA for the Bear Canyon/Trail Creek Land Exchange and determined that these actions will not have significant impacts on the quality of the human environment. Thus, an Environmental Impact Statement (EIS) will not be prepared. The implementing regulations for NEPA at 40 CFR 1508.27 provide criteria for determining the significance of effects. This provision requires consideration of both the **context and intensity** of predicted effects in determining significance. I based my finding on the following:

(a) **Context:**

I have determined that the appropriate context for weighing the significance of impacts is within the general vicinity of the project area, including the Bear Canyon and Trail Creek drainages and the Chestnut Mountain /Stinger Basin area, south of Interstate 90. I came to this conclusion because the potential environmental, social and economic effects are not significant and are limited to the project area and the immediately adjacent areas (*See EA, Chapter 4, pages 54-70*).

(b) **Intensity:**

In accordance with 40 CFR 1508.27(b) my determination that the severity of impacts was not significant was based on consideration of the following 10 factors:

1. ***Beneficial and adverse environmental impacts.***

Based on the predicted impacts of the alternatives discussed in the EA (Chapters 2 and 3), I have determined that both the beneficial and adverse impacts of the action will not be significant. As discussed earlier in this Decision Notice, five issues were identified as being significant to this decision. I concluded that the scope and magnitude of effects associated with these issues were limited and acceptable.

This land exchange, with associated grants, assignment and reservations of road and trail easements, is clearly in the public interest. This exchange meets the standards and guidelines of the Forest Plan.

Upon conveyance of the non-Federal lands to the U.S., the newly-acquired lands will be managed similar to the surrounding National Forest System (NFS) lands, in accordance with the Forest Plan. The consolidation of NFS lands in the Bear Canyon and Chestnut Mountain area will improve management of valuable natural resources, including wildlife habitat, recreational access, watershed and scenic values. (*See EA, pages 54-65*).

2. ***The degree to which the proposed action affects public health or safety.***

The Bear Canyon – Trail Creek Land Exchange does not include activities that would pose a risk to public health and safety. (*See EA, page 68*).

The land exchange will tend to protect water quality. The Bear Canyon watershed includes erosion prone and landslide hazard soils. In the No Action alternative, potential development of private lands in the Bear Canyon watershed would likely contribute additional sources of sediment, thus degrading water quality. (See EA, pages 54-55.)

The Federal lands conveyed to private ownership will become subject to the laws, regulations and zoning authorities of state and county governments (36 CFR 254.3).

3. *Unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, wetlands, or ecologically critical areas.*

There will be no significant effects on unique characteristics of the area, because the lands to be exchanged have similar characteristics and have historically been managed primarily for timber and livestock grazing purposes, with dispersed recreation use. All the lands included in the exchange contain low-standard roads. No Inventoried Roadless wilderness study area, or designated wilderness lands are involved. (See EA, page 61).

The analysis also demonstrates that there will be no significant effects on ecologically critical areas such as historic or cultural resources, park lands, prime farmlands, or wild and scenic rivers (see EA, Chapter 4).

The Proposed Action will result in an increase of approximately 1.5 acres of wetlands and floodplain under Federal jurisdiction. Consolidation of private lands in the Trail Creek area, and consolidation of NFS lands in Bear Canyon should in general, result in fewer requests for new roads and development of private lands because of a more consolidated landownership pattern, and less impact on NFS land the event of development of private land. (See EA page 59-62).

4. *The degree to which the effects on the quality of the human environment are likely to be highly controversial.*

The effects on the quality of the human environment are not likely to be highly controversial because there is no known scientific controversy over the impacts of the project (See EA, Chapter 4).

The comments received during scoping in 2009 and again during public comment for the EA in 2011 were mostly supportive and do not demonstrate a high degree of controversy. The public comments primarily relate to the issues identified in the EA (wildlife habitat, recreational access, water quality) and analyzed in Chapter 4 of the EA.

5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.*

There are no known effects to the human environment that are highly uncertain or involve unusual risk. The effects of the action are similar to those of past similar actions. The Forest Service, Northern Region, Gallatin National Forest, have implemented numerous land exchanges and granted and reserved road and trail easements over many years. The effects of these actions are well understood (*See EA, Chapter 4*).

6. *The degree to which the action may establish a precedent for future actions with significant effects, or represents a decision in principle about a future consideration.*

This project does not set a precedent for other projects that may be implemented to meet the goals and objectives of the Forest Plan. Other than transfer of title and the exchange of road easements, this action does not authorize any site-specific management activities by either party. In the future, the Forest Service must carefully evaluate each potential land exchange or other action on its own merits. Any future action must be evaluated through the National Environmental Policy Act process. Any future action must stand on its own regarding a public interest determination, feasibility, and environmental effects.

7. *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.*

The cumulative effects of past, present, and reasonably foreseeable future actions were considered for each of the significant issues. Based on these discussions, I conclude there would be no significant cumulative impacts. (*See EA, Chapter 4*.)

8. *The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed, or eligible for listing, in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.*

The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, because investigation of the lands to be conveyed into private ownership identified no such resources. The action will also not cause loss or destruction of significant scientific, cultural, or historical resources, because no cultural resources are known to occur on any of the lands identified for exchange. (*See EA page 67*).

9. *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.*

The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species act of 1973, because the Biological Assessment and Biological Evaluation for the project did not identify any such adverse effects (*See EA, pages 56-58*). In an October 22, 2010 letter to the Acting

Bozeman District Ranger, the US Fish and Wildlife Service stated that “...the Service has reviewed the Biological Assessment and concurs with the determination that the proposed action is not likely to adversely affect the threatened grizzly bear, the threatened Canada lynx or designated critical habitat for Canada lynx.”

10. Whether the action threatens to violate Federal, State, or local law or requirements imposed for the protection of the environment.

This action does not threaten a violation of federal, state or local law or requirements imposed for protection of the environment. Applicable laws and regulations were considered in the EA (see EA Chapters 3 and 4, and Section VIII below).

The action is consistent with the Forest Plan (1987) for the Gallatin National Forest, as amended, (See EA pages 16, 30-31). The project meets the overall direction of protecting the environment while producing goods and services, and using landownership adjustment as a tool for accomplishing resource management objectives.

The action will authorize transfer of title to lands and the granting of road easements. The action will not authorize any site-specific management activities by either party.

Officials for the state of Montana, Gallatin County and Park County were made aware of the land exchange. No objections were received. The Federal lands conveyed to private ownership will be subject to state and county laws, regulations and zoning authorities. The state of Montana and Park County will be the primary regulatory authorities for land use activities that may occur on the land conveyed to private ownership.

VIII. Findings Required by Other Laws, Regulations, and Policies

- This land exchange, together with the grant, reservation and assignment of road and trail easements, complies with the requirements of **The General Exchange Act** (P.L. 67-173; 42 Stat. 465; March 20, 1922), as amended by the **Federal Land Policy and Management Act of 1976** (“FLPMA”, P.L. 94-579; 90 Stat. 2743; October 21, 1976) and the **Act of August 20, 1988** (“FLEFA”, 102 Stat. 1086; 43 U.S.C. 1716(note).
- This land exchange complies with **Sec. 402 (g) of FLPMA** regarding grazing allotments on Federal lands. Trail Creek Ranch (TCR) will retain its grazing permit for two years from the date of notification, i.e. for the 2010 and 2011 seasons. DePuy will also retain its grazing permits for the 2010 and 2011 seasons. In the Bear Canyon Allotment, the grazing permits will be modified to reflect the change in ownership. In the Trail Creek Allotment, the term grazing permit will change to a Term On/Off grazing permit. The Bald Knob Allotment will be located entirely on private land and no longer be suitable as a National Forest allotment. The Forest Service will take appropriate steps to close it in the future.

- Federal acquisition of the remaining private lands in the Bear Canyon watershed will help ensure future compliance with **The Clean Water Act of 1977** and with *State of Montana (DEQ) Water Quality standards* for restoration of impaired streams.
- This exchange will result in a small net increase of wetland and floodplain on NFS lands. This exchange complies with **Section 404 of the Clean Water Act**, with **Executive Order 11988** for floodplains and **Executive Order 11990** for wetlands management.
- The exchange complies with the **Endangered Species Act** of 1973, as amended. A Biological Assessment and Evaluation (October 2010) show that no proposed or listed Endangered, Threatened or sensitive species or their habitats will be adversely affected.
- This exchange complies with the Forest Plan for the Gallatin National Forest, as amended, and therefore complies with the **National Forest Management Act** of October 22, 1976, as amended.
- In 2005, the Forest Service implemented a travel rule (36 CFR Parts 212, 251, 261, and 295) closing NFS lands to motorized travel except on designated routes. In 2006, the Gallatin National Forest issued its *Travel Management Plan*. This exchange is consistent with the adopted travel rules and Travel Management Plan. It will consolidate NFS and private lands, and improve future management of travel on NFS lands.
- No lands in the exchange are located within Congressionally-designated Wilderness or Inventoried Roadless Areas. The exchange complies with **The Wilderness Act of 1964** and the *Roadless Final Rule* (36 CFR 294, USDA 2001).
- No resources eligible for the *National Register of Historic Places* were located within the Federal land, thus no action was necessary for compliance with **Section 106 of the National Historic Preservation Act** and **Executive Order 11593**.
- This exchange does not conflict with **Executive Order 12898** regarding Environmental Justice in Minority Populations and Low Income Populations. No concerns related to Environmental Justice have been identified.
- The non-Federal and Federal lands in the exchange were appraised to federal standards and reviewed and approved by a Forest Service Review Appraiser. The appraisals for this exchange are in compliance with the “*Uniform Appraisal Standards for Federal Land Acquisitions*” and the “*Uniform Standards of Professional Appraisal Practice*”.
- This exchange complies with BLM’s decision to suspend all federal oil and gas leases on the Gallatin National Forest, following the Ninth Circuit Court ruling (*Connor v Burford*) in 1985. In the exchange, the U.S. will reserve oil and gas minerals on the Federal lands

and DePuy will reserve oil and gas minerals on commensurate acreage of Non-Federal lands, until the federal oil and gas leases are terminated. The Forest Service submitted the Minerals Report and Addendum to BLM for concurrence on March 15, 2011.

- The Federal and non-Federal lands were examined for evidence of hazardous materials in accordance with the **Comprehensive Environmental Response, Compensation and Liability Act** of 1980 (CERCLA) (42 U.S.C. 9601), as amended. Phase I Environmental Site Assessments for all parcels were completed by a qualified investigator. No evidence was found to indicate any hazardous material was stored, disposed or released on the lands identified for exchange.

IX. Implementation

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period. When appeals are filed, implementation may occur on, but not before, the 15th business day following the date of the last appeal disposition.

X. Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 215.11. Only individuals or organizations that submitted comments or otherwise showed interest in this project may appeal. A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in the Bozeman Chronicle. It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the newspaper of record is the *exclusive* means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.

Paper appeals must be submitted to: USDA Forest Service, Northern Region, ATTN: Appeal Deciding Officer, P.O. Box 7669, Missoula, MT 59807; or USDA Forest Service, Northern Region, ATTN: Appeal Deciding Officer, 200 East Broadway, Missoula, MT 59802. Office hours: 7:30 a.m. to 4:00 p.m. Fax (406) 329- 3411.

Electronic appeals must be submitted to: <appeals-northern-regional-office@fs.fed.us>. In electronic appeals, the subject line should contain the name of the project being appealed. An automated response will confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, or Rich Text Format (RTF).

It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing. At a minimum, the appeal must meet

the content requirements of 36 CFR 215.14, and include the following information: The appellant's name and address, with a telephone number, if available; A signature, or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal); When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request; The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision; The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251, subpart C; Any specific change(s) in the decision that the appellant seeks and rationale for those changes; Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement; Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and, How the appellant believes the decision specifically violates law, regulation, or policy.

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 days following the date of appeal disposition.

When an appeal is received under this rule, the Responsible Official, or designee, must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal (36 CFR 215.17). If the appellant accepts the offer, the meeting must take place within 15 days after the closing date for filing an appeal (i.e. 45 to 60 days from the publication date of the legal notice of this decision in the Bozeman Chronicle). These meetings, if they take place, are open to the public. For information on if, when and where such a meeting is scheduled, please visit the following web site: www.fs.usda.gov/goto/r1/appeal-meetings

XI. Contact Person

For additional information concerning this decision or the Forest Service appeal process, contact Robert Dennee, Project Manager, East Side Lands Zone, c/o Gallatin National Forest, 10 East Babcock Street, Bozeman, MT 59715. Phone: 406-587-6914, e-mail: rdennee@fs.fed.us.

Mary C. Erickson
MARY C. ERICKSON
Forest Supervisor
Gallatin National Forest

7/11/2011
Date

XII. Appendix A – Response to Comments on the EA

Decision Notice and Finding of No Significant Impact Bear Canyon/Trail Creek Land Exchange

No.	Commenter
1	Hannah Stouts, Greater Yellowstone Coalition
2	Jerry Caler
3	Alex Diekmann, The Trust for Public Land
4	Brian Gallik, for Trail Creek Ranch, LLC

Forest Service Response to Comments

Comment No.	Comment and Forest Service Response
1.01	<p>GYC - Comment:</p> <p>Members of the Greater Yellowstone Coalition (GYC), including our staff, care deeply about the Bear Canyon area and frequently use the area for all kinds of recreation including hiking, wildlife viewing, biking, skiing, hunting, and horseback riding. Due to the high community and wildlife value of this area, GYC strongly supports the Gallatin National Forest's efforts to secure a land exchange that would serve to consolidate ownership of public and private lands</p> <p>Response: The Forest Service appreciates this comment. We recognize the public benefits of consolidating public and private lands in the Bear Canyon and Trail Creek area through this land exchange, in particular to conserve wildlife habitat, enhance recreational access and protect the viewshed from the community of Bozeman, as described in Sections 4.3. 4.4. 4.5 and 4.10, pages 56 to 65 of the EA.</p>
1.02	<p>GYC - Comment:</p> <p>The Bear Canyon and Trail Creek area serves as vital habitat and a migration corridor for a multitude of wildlife such as deer, elk, moose and bears. The Montana Fish, Wildlife and Parks considers this area as one of the most vital refuges for wildlife along the northern portion of the Gallatin Range.</p> <p>Response: The Forest Service concurs with this comment. As discussed on pages 20-21 of the Decision Notice/FONSI, biologists for Montana FWP submitted comments during scoping in 2009 in support of this land exchange, pointing out the benefits to wildlife habitat. The effects on wildlife are described in Section 4.3., pages 56-58 of the EA.</p>

Comment No.	Comment and Forest Service Response
1.03	<p>GYC - Comment:</p> <p>This important area would benefit from the proposed land exchange by 1) consolidating public and private land ownership, 2) eliminating the need for new roads in the Bear Canyon area to access the current private inholdings, and 3) preventing potential development from occurring in an area currently under no zoning restrictions.</p> <p>Response: The Forest Service concurs with this comment. We recognize the public benefits of consolidating public and private lands in the Bear Canyon /Trail Creek area through this exchange. As described in detail in the EA, (Sections 4.3. 4.4. 4.5., 4.8 and 4.10, pages 56- 65), this exchange will reduce potential requests for new roads across NFS lands to access and develop private inholdings, particularly in the Bear Canyon – Chestnut Mountain areas. The permanent deed restriction on Federal land in Lot 1 of Section 22 will preclude new development of that parcel.</p>
2.01	<p>Jerry Caler - Comment:</p> <p>As a result of your scheme, this would open the area to more development. You are changing the rules after they were set. You will disturb wildlife and vegetation as a result of this plan; create more noise pollution on Trail Creek Rd; increase traffic causing safety and road maintenance issues; and cause an overall detrimental impact to the area.</p> <p>Response: The Forest Service respects these concerns but does not agree. The analysis of effects in the EA does not support a contention that the land exchange,, which is the Proposed Action, would open the area to more development, increase noise pollution or traffic, or increase disturbance to wildlife or vegetation. In comparing the Proposed Action and the No Action alternatives, it is anticipated that No Action could actually lead to more construction of new roads to access the existing scattered DePuy parcels. Subsequent sale and development of these parcels would lead to an increase in traffic, and more disturbance to wildlife and vegetation, in contrast to the Proposed Action.</p>

Comment No.	Comment and Forest Service Response
3.01	<p>TPL -Comment:</p> <p>The Trust for Public Land wholeheartedly endorses and supports the proposed Bear Canyon-Trail Creek Land Exchange between Depuy Enterprises, Inc. and the USDA Forest Service. Consolidating the various inholdings that DePuy owns in the Bear Canyon area into public ownership has been a long-standing goal of the Gallatin National Forest, wildlife advocates and the recreating public alike. Not only would the proposed action simplify management for the Forest Service, but it would also prevent development and new road building in wildlife-rich area that is becoming increasingly popular with the Bozeman community. The contemplated exchange is truly a win-win for everyone involved.</p> <p>Response: The Forest Service appreciates this comment. We recognize the public benefits of consolidating public and private lands in the Bear Canyon and Trail Creek area through this land exchange, in particular to conserve wildlife habitat, enhance recreational access, reduce the potential for new roading and development, and improve future management of the Gallatin National Forest, as described in Sections 4.3. 4.4. 4.5, 4.8 and 4.10, pages 56 to 65 of the EA.</p>
4.01	<p>Trail Creek Ranch, LLC - Comment:</p> <p>On behalf of the owners of TCR, we wish to express our sincere support for this proposal that seeks to consolidate “checkerboarded” lands in an equitable manner, and provide legal access to the respective owners to manage their consolidated land base.</p> <p>Response: The Forest Service appreciates this comment, particularly from a neighboring private landowner. We recognize that consolidating lands in the Bear Canyon and Trail Creek area through this land exchange will improve future management, as described in Sections 4.3. 4.4. 4.5, 4.8 and 4.10, pages 56 to 65 of the EA.</p>

Comment No.	Comment and Forest Service Response
4.02	<p>Trail Creek Ranch, LLC - Comment:</p> <p>We have expressed specific concerns with the terms and conditions of a proposed assignment for a road easement from DePuys to the U.S.F.S. over the west Trail Creek Road. This is our main access into our ranch so we are particularly interested in the outcome of this assignment. As a result of our productive meeting with Mr. Dennee, Mr. Madden, and Mr. Darrell Smith on June 9, 2011, we understand our ability to comment in the future and continue to work out our concerns with the easement is part of the process. We mention this not as a formal comment to the EA, as we support the exchange, but rather our commitment to continue to work in a pro-active manner to resolve our concerns with this easement.</p> <p>Response:</p> <p>The Forest Service recognizes TCR's concerns regarding the assignment of easement for West Fork Trail Creek Road for administrative purposes. As discussed in meetings, this easement is an integral part of the negotiated land exchange. The Forest Service currently views this road as a secondary means of access into the area, not a primary means of access. However, the right to use this road on an incidental basis will enable the Forest Service to more effectively manage the NFS lands in the Trail Creek area in the future. We will continue to work with TCR regarding future use and maintenance of this road across TCR lands.</p>